



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 8568610

Date: JULY 21, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an aerospace engineering researcher, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.⁴ The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. At the time of filing, the Petitioner was working as a research engineer in the School of Aerospace Engineering at [REDACTED].⁵

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner indicated that he intends to continue his research involving "[REDACTED] structural designs, multidisciplinary strategies, analysis, optimization, surrogate modeling techniques, and effective computational [REDACTED] tools." He asserted that his proposed research is aimed at "the application of [REDACTED] network techniques, which are developed through [REDACTED] to aerospace engineering problems." The Petitioner further stated that his undertaking involves developing "[REDACTED] algorithms," applying "[REDACTED] learning techniques to engineering surrogate modeling," and designing "intelligent aerospace/infrastructural systems."

The record supports the Director's determination that the Petitioner's proposed endeavor has substantial merit and national importance. For example, the Petitioner presented a strategic plan from the U.S. National Science and Technology Council discussing the research and development investments needed to help define and advance policies that ensure the responsible, safe, and beneficial use of artificial intelligence. He also provided information about employment in the U.S. aerospace and defense industry and the number of jobs supported by the industry. In addition, the record includes documentation indicating that the benefit of the Petitioner's proposed research has broader implications, as the results are disseminated to others in the field through engineering journals and conferences. As the Petitioner has documented both the substantial merit and national importance of his proposed aerospace engineering research, we agree with the Director's determination that he meets the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. The record includes documentation of his curriculum vitae, academic credentials, published articles, conference

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ The Petitioner received a Ph.D. in Aerospace Engineering from [REDACTED] in May 2012.

⁵ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we will consider information about his position to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

presentations, and peer review activity. He also offered evidence of articles that cited to his published work, and letters of support discussing his past research projects.

The Petitioner contends on appeal that he “has provided evidence of his expertise, his education, skills and knowledge.” He maintains that “[h]e has a demonstrated and documented record of success, and his work has attracted the interest of relevant entities and individuals.” The Petitioner further indicates that that he provided letters of support from “highly respected leaders in the field” attesting to his research contributions. For the reasons discussed below, the record supports the Director’s determination that the evidence is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed research under *Dhanasar*’s second prong.

In letters supporting the petition, several references discussed the Petitioner’s research projects at [REDACTED].⁶ For example, [REDACTED], senior process leader at [REDACTED], indicated that the Petitioner was “primary inventor” of the [REDACTED] tool, a web application used to monitor and predict [REDACTED] energy usage. [REDACTED] explained that “[t]he premise behind the [REDACTED] tool was developed over the course of numerous research projects, launching its first version in 2013.” He further stated: “[The Petitioner] and his peers proposed a [REDACTED] approach to model, simulate, and forecast the [REDACTED] electricity demand by factoring in available time information and weather data.” Additionally, [REDACTED] asserted that the Petitioner “contributed to the development of efficient data analytic techniques to glean key information from a large pool of data, ultimately shedding new light on the way the [REDACTED] consumes energy.” [REDACTED] also claimed that the Petitioner’s methods “can be extended to the energy sector,” but he does not offer specific examples of their application by organizations in that sector. Nor has the Petitioner shown that [REDACTED] has been implemented, utilized, or applauded by others in the field.

Furthermore, [REDACTED], chief scientist in the [REDACTED] at [REDACTED] stated: “Under the sponsorship of [REDACTED] [the Petitioner] facilitated numerous research projects to predict the future of sensory measurements in infrastructural systems, such as building energy consumption.” Regarding the Petitioner’s development of [REDACTED] based analysis techniques for large scale [REDACTED] networks, [REDACTED] indicated that he “assisted in the creation of a [REDACTED] network model using [REDACTED].” [REDACTED] asserted that the Petitioner’s “model enabled the precise exploration of design spaces formed from [REDACTED] options and operational settings. Moreover, the model can be further adapted and calibrated to real [REDACTED] data, which will result in relevant information on an operating [REDACTED] system.” While [REDACTED] contended that based on the Petitioner’s [REDACTED] baseline, future research studies can identify new technology additions and improve [REDACTED] system performance,” the Petitioner has not shown that his [REDACTED] work stands to be utilized for analyzing [REDACTED] systems beyond the [REDACTED] has affected the aerospace engineering field, or otherwise constitutes a record of success in his area of research.

⁶ While we discuss a sampling of these letters, we have reviewed and considered each one.

[REDACTED] noted that he “worked extensively with [the Petitioner] on a [REDACTED] combined-cycle power plant predictive analysis tool” as part of the [REDACTED] project at [REDACTED] for which [REDACTED] “was Program Manager.”

With respect to the Petitioner's research involving application of a [redacted] [redacted] to predict [redacted] lift coefficient, [redacted] professor of mechanical engineering at [redacted] University, asserted that the Petitioner "collaboratively trained multiple [redacted] structures to learn the lift coefficients of the [redacted] with numerous shapes in multiple flow [redacted] numbers, [redacted] numbers and verse [redacted]" [redacted] further stated that "[t]he outcomes of this study lay the groundwork for future research in aerospace engineering and related fields, specifically researchers interested in harnessing well-developed [redacted] techniques in image recognition tasks for engineering [redacted] tasks," but he does not offer specific examples of how the Petitioner's [redacted] has generated positive interest among relevant parties, has been utilized in the aerospace industry, or otherwise represents a record of success in his field.

In regard to the Petitioner's work on the [redacted] project, [redacted] [redacted] director of the [redacted] at [redacted] indicated that the Petitioner was responsible for developing and confirming the mathematical model for [redacted] Tilt-Rotor performance. [redacted] stated that the Petitioner "created a prototypical model of the [redacted] class" and "proposed an original method to [redacted] two distinct flight modes by unifying the logic for measuring [redacted] [The Petitioner's] [redacted] model resulted in [redacted] estimations of all performance metrics, such as fuel burns, payload weight, cruise speed, and range." The record includes a Google Scholar citation report indicating that the aforementioned work presented at the [redacted] American Institute of Aeronautics and Astronautics (AIAA) Aviation Technology, Integration, and Operations Conference [redacted] has received three citations since its publication in [redacted] The Petitioner, however, has not demonstrated that this number of citations constitutes a record of success or a level of interest in his work from relevant parties sufficient to meet *Dhanasar*'s second prong.

As it relates to the citation of the Petitioner's work, his appellate submission includes June 2019 information from Google Scholar indicating that his three highest cited articles in *AIAA/American Society of Civil Engineers/American Helicopter Society/American Society for Composites Structures, Structural Dynamics, and Materials Conference* (2018), *American Society of Mechanical Engineers 8th International Conference on Energy Sustainability* (2014), and *International Conference on Big Mining and Big Data* (2016) each received 12, 5, and 4 citations, respectively. The Petitioner does not specify how many citations for each of his individual articles were self-citations by him or his coauthors. Moreover, he does not indicate how many of the citations occurred in papers published prior to or at the time of initial filing. Eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1). Nor does the Petitioner offer comparative statistics showing the significance of this level of citation within his field.

Regarding his peer review activity, the Petitioner provided an email indicating that he was invited to review a paper for *Applied Energy* in [redacted] 2018, but he did not provide evidence showing that he completed the review. In addition, the invitation post-dates the filing of the petition. See 8 C.F.R. § 103.2(b)(1). Regardless, the Petitioner has not documented the stature of this journal or offered other documentation demonstrating that his peer review experience rises to the level of rendering him well positioned to advance his proposed aerospace engineering research. Nor does the record show that the Petitioner's occasional participation in the widespread peer review process represents a record of success in his field or that it is otherwise an indication that he is well positioned to advance his research endeavor.

Additionally, while the Petitioner's Ph.D. from [] renders him eligible for the underlying EB-2 visa classification, he has not shown that his academic accomplishments by themselves are sufficient to demonstrate that he is well positioned to advance his proposed endeavor.

The evidence indicates that the Petitioner has conducted, published, and presented research while working at [] but he has not shown that this work renders him well positioned to advance his proposed research. While we recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit, not every individual who has performed original research will be found to be well positioned to advance his proposed endeavor. Rather, we examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual's progress towards achieving the goals of the proposed research, record of success in similar efforts, or generation of interest among relevant parties supports such a finding. *Id.* at 890. The Petitioner, however, has not shown that his published and presented work has served as an impetus for progress in the aerospace engineering field or that it has generated substantial positive discourse in the engineering community. Nor does the evidence otherwise demonstrate that his work constitutes a record of success or progress in machine learning, surrogate modeling, and intelligent aerospace/infrastructural systems design. As the record is insufficient to show that the Petitioner is well positioned to advance his proposed research endeavor, he has not established that he satisfies the second prong of the *Dhanasar* framework.

C. Balancing Factors to Determine Waiver's Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Here, the Petitioner claims that he is eligible for a waiver due to his research experience and accomplishments, the importance of his field, and the impracticality of labor certification. However, as the Petitioner has not established that he is well positioned to advance his proposed endeavor as required by the second prong of the *Dhanasar* framework, he is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite second prong of the *Dhanasar* analytical framework, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.